

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.5639 OF 1987

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?
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A.T.SHAH AYURVEDIC SARVAJANIK HOSPITAL
VERSUS
H.N.THAKORE & ORS.

Appearance:

MR NK THAKKAR for Petitioner
MR GIRISH PATEL for Respondents

Coram: S.K. Keshote,J
Date of decision:24/10/1997

C.A.V. JUDGMENT

#. The learned counsel for the parties are in agreement that the matter in dispute has been settled in between the parties, i.e. the petitioners and respondents No.1 and 3 and as such, this writ petition against respondents No.1 and 3 has become infructuous. Order accordingly. But as the grievance of the petitioner against respondent No.2 still survives, the matter has to be considered on merits and the facts relevant for deciding the Special Civil Application are only taken in respect of respondent No.2.

#. The respondent No.2 was working as head clerk with the petitioner at the monthly salary of Rs.1,000/-. He was found to have misappropriated funds of the petitioner as well as falsified the accounts and forged documents as a result of which he was put under suspension pending enquiry. He was paid subsistence allowance at the rate of 50% of the pay. The respondent No.2 filed a suit against the petitioner for injunction restraining it from discharging him from services but ultimately the interim injunction granted has been vacated. The respondent No.2 claimed subsistence allowance at the rate of 75% after three months and at the rate of 90% after six months from the date of suspension and filed application u/s.33(c)(2) of the Industrial Disputes Act, 1947, for computation of the aforesaid amount. That application has been contested by petitioner and it was granted by the Labour Court under its order dated 31st August 1987. Hence this Special Civil Application.

#. The claim of the respondent No.2 for enhancement of subsistence allowance has been accepted by the Labour Court by giving reference to the Industrial Employment (Standing Orders) Act. The learned counsel for the petitioner contended that Industrial Employment (Standing Orders) Act is not applicable to the petitioner-establishment and as such the Labour Court has exceeded its jurisdiction in passing the order impugned in favour of respondent No.2. It has next been contended that proceedings u/s.33(c)(2) of the Industrial Disputes Act, 1947, are in the nature of execution proceedings and the claim of the nature as made by respondent No.2 could not have been entertained by the Labour Court. In support of this contention, the learned counsel for the petitioner made reference to certain decisions of Hon'ble Supreme Court and of this Court.

#. On the other hand, the learned counsel for respondents, Shri Girish Patel very fairly conceded that provisions of the aforesaid Act are not applicable to the

case of respondent No.2. However, the learned counsel for respondents contended that the petitioner has not its own standing orders and the Contract of employment also did not speak of any provision for suspension of respondent No.2 in contemplation or during pendency of enquiry. So in absence of the aforesaid provision, though respondent No.2 could have been asked not to work, i.e. he could have been prevented from working but full salary has to be paid to him. Substantial justice has been done in the present case and sitting under Article 227 of the Constitution of India, this Court may not interfere with the order of the Labour Court.

#. The learned counsel for the petitioner very fairly conceded that the petitioner has not its own standing orders. He further admitted that the contract of employment also does not contain any condition that an employer can put an employee under suspension and to pay subsistence allowance during that period.

#. I have given my thoughtful considerations to the submissions aforesaid made by learned counsel for the parties.

#. It is true, in view of the admission made by learned counsel for petitioner that there are no standing orders of petitioner nor there is any condition in the contract of employment that the employee can be put under suspension and paid subsistence allowance, but the question which calls for consideration of this Court is whether this Court should interfere with the order of the Labour Court or not. When the petitioner has no standing orders of its own making therein the provision for suspending an employee in contemplation or during pendency of enquiry, and further in absence of contract of service to this extent, the respondent No.2 could not have been denied of his salary for the period during which the employer had suspended him from working. In absence of any such provision either in the standing order or the terms of contract of employment, the employer could not have denied wages to the concerned workman. However, it is for the employer to take work from him or not but he cannot be denied wages to any extent whatsoever and the wages could not have been reduced. In such case, *prima-facie*, there may be some justification for the workman to approach the Labour Court under section 33(c)(2) of the Industrial Disputes Act, 1947, for computation of the amount. It is true that in such case, remedy would have also been available to the concerned workman under the Payment of Wages Act, 1936. But merely because a wrong provision has been

taken into consideration and the relief has been granted still where this Court feels that substantial justice has been done, this Court, sitting under Article 226/227 of the Constitution of India, may legitimately decline to interfere with the order. In such case, there is no question of causing of any prejudice to the petitioner. On the contrary, though the respondent No.2 would have been entitled for full salary, he will get, under the impugned order, salary to the extent of 75% and then 90%. So if any prejudice is caused, then it is caused to respondent No.2 by this order and no to the petitioner. The learned counsel for the petitioner Shri N.K.Thakkar has laid much emphasis on the fact that once this Court has come to the conclusion that provisions of Industrial Employment (Standing Orders) Act, are not applicable, the order impugned is without jurisdiction and as such it has to be set aside. I do not find any substance in this contention. This Court, even if it is accepted that there is some lack of jurisdiction exercised by the Labour Court, may decline to interfere with the order of the Labour Court under Article 226 of the Constitution, where it is satisfied that there being no failure of justice in the case. Reference in this respect may have to the two decision of the Apex Court in the case of A.M. Allison v. B.L.Sen, reported in AIR 1957 SC 227, and in the case of Balvant Rai v. M.N.Nagrashna, reported in AIR 1960 SC 407. Similarly, in the case of petition under Article 227 of the Constitution of India, the petitioner cannot claim writ therein as a matter of course or right. This Court, under Article 227 of the Constitution, cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. Exercise of powers by this Court under Article 227 of the Constitution must be restricted to the cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice where grave injustice would be done unless this Court interferes. Reference, if any needed, then it may have to the case of Shri Laxmikant Revachand Bhojwani v. Pratapsingh Mohansingh Pardesi, reported in 1995(6) SCC 576. As stated earlier, if any prejudice is caused, it is caused to the respondent No.2 by the impugned order and not to the petitioner. Where The Industrial Employment (Standing Orders) Act is not applicable, it was incumbent upon the petitioner to pay full wages for the suspension period to the respondent No.2.

#. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any granted by this Court, stands vacated. The petitioner is directed to pay Rs.1,000/- by way of

costs of this petition to respondent No.2 only as respondents No.1 and 3 have compromised the matter. The petitioner has deposited the amount as ordered to be paid by it to respondents No.1, 2 and 3. The matter has been compromised by respondents No.1 and 3. Out of the total amount which has been deposited here and which is lying invested in the F.D.R., which has already matured on 31st August 1997, it is hereby ordered that the amount payable to respondent No.2 in terms of the order dated 31st August 1987 of the Labour Court, together with the interest thereon, should be paid to him and the rest of the amount together with interest thereon should be refunded back to the petitioner. This exercise has to be undertaken forthwith.

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(sunil)